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1 Marc A. Levinson (California Bar No. 57613)
 2 Jeffery D. Hermann (California Bar No. 90445)
 3 ORRICK, HERRINGTON & SUTCLIFFE LLP
 4 400 Capitol Mall, Suite 3000
 5 Sacramento, California 95814-4497
 6 Telephone: (916) 447-9200
 7 Facsimile: (916) 329-4900
 8 Email: malevinson@orrick.com
 9 jhermann@orrick.com

Robert Kinas (Nevada Bar No. 6019)
 Claire Dossier (Nevada Bar No. 10030)
 SNELL & WILMER LLP
 3883 Howard Hughes Parkway, Suite 1100
 Las Vegas, Nevada 89169
 Telephone: (702) 784-5200
 Fax: (702) 784-5252
 Email: rkinas@swlaw.com
 cdossier@swlaw.com

6 **ATTORNEYS FOR USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC**

7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

9
 10 In re:
 11 USA COMMERCIAL MORTGAGE COMPANY,
 12 USA CAPITAL REALTY ADVISORS, LLC,
 13 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 14 LLC,
 15 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 16 USA SECURITIES, LLC,

Debtors

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter Number: 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

17 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

**USA CAPITAL DIVERSIFIED
 TRUST DEED FUND, LLC'S
 THIRTEENTH REPORT OF
 ACTION TAKEN AND
 PROGRESS TOWARDS
 CONSUMMATION OF
 CONFIRMED PLAN OF
 REORGANIZATION**

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 22 **POST-EFFECTIVE DATE USA CAPITAL DIVERSIFIED TRUST
 23 DEED FUND, LLC's THIRTEENTH REPORT OF ACTION TAKEN AND PROGRESS
 24 TOWARDS CONSUMMATION OF CONFIRMED PLAN OF REORGANIZATION**

25 Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC ("Diversified" or
 26 "Revested Debtor"), a revested debtor in the above-captioned chapter 11 cases (the "Chapter 11
 27 Cases"), by and through its counsel noted above, hereby submits this Thirteenth Report of Action
 28 Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (the
 "Thirteenth Report"), pursuant to the Court's "Order Confirming the "Debtors' Third Amended

1 Joint Chapter 11 Plan of Reorganization,’ as Modified Herein” [Docket No. 2376] (the
 2 “Confirmation Order”) entered January 8, 2007. *See Confirmation Order, ¶ 74.* The Debtors’
 3 Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”) went effective on March
 4 12, 2007 (the “Effective Date”).

5 This Thirteenth Report is for the period from January 1, 2011 to July 1, 2011 (“Report
 6 Period”). This Thirteenth Report incorporates the requirements and structure of former Rule
 7 3020(a) of the Court’s Local Rules of Bankruptcy Practice, abrogated in May 2006, which were
 8 as follows:

9 **(A) A schedule of personal property costing more than \$5,000 and any real
 10 property acquired, sold or disposed of and the price paid for each:**

11 Personal property costing more than \$5,000:	None
12 Real property acquired, sold or disposed of:	None
13 Total:	\$0.00

14 **(B) A schedule listing each debt, the total amount required to be paid under the
 15 Plan, the amount required to be paid to date, the amount actually paid to date, and the
 16 amount unpaid:**

17 Due to the nature of its operations as an investment fund with contracted services
 18 through intercompany debtor entities and no employees, Diversified had only a relatively
 19 small number of claims filed against it in the Chapter 11 Cases. Such claims included
 20 general unsecured claims (many of which were misfiled as creditor claims by holders of
 21 equity interests in Diversified) and administrative expense claims related to professional
 22 fees accrued during the Chapter 11 Cases. All unsecured creditors and administrative
 23 expense claims have been paid in full.

24 **(C) A schedule of executory contracts entered into:**

25 No executory contracts were entered into during the Report Period

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1 (D) A statement listing each postpetition tax (i.e., income, payroll, property,
 2 sales), payee, and the amount actually paid:

3 Federal Unemployment taxes: None
 4 Federal Payroll taxes: None
 5 Nevada Unemployment taxes: None
 6 Total: \$0.00

7 (E) Progress toward completion of the Plan and a list and status of any pending
 8 adversary proceedings or motions and resolutions expected:

9 1. General Progress

10 The major terms of the Plan with respect to Diversified have all been
 11 accomplished. The Operating Agreement of Diversified has been amended, USA Capital
 12 First Trust Deed Fund, LLC has made certain payments and assignments to Diversified,
 13 and Diversified is operating in the post-confirmation realm. In March 2011, Diversified
 14 sent a letter to its investors updating them on the status of Diversified's recovery efforts
 15 and other matters. See March 7, 2011 letter, a copy of which is attached hereto as Exhibit
 16 A.

17 2. Nondischargeability Complaint – In re Thomas A. Hantges

18 On February 11, 2008, Diversified filed a nondischargeability complaint (the
 19 "Hantges Dischargeability Complaint") in the Thomas A. Hantges bankruptcy
 20 proceeding. [Docket No. 527 in Bankruptcy Case No. 07-13163; Adversary Case No.
 21 08-01041]. The Hantges Dischargeability Complaint alleges that Mr. Hantges' debts to
 22 Diversified should not be discharged under 11 U.S.C. § 523 because Mr. Hantges (1)
 23 obtained money and property from Diversified through false pretenses, false
 24 representations, and/or actual fraud, (2) Mr. Hantges misappropriated Diversified's
 25 money and property while acting in a fiduciary capacity towards Diversified, and (3)
 26 Mr. Hantges obtained Diversified's money and property by means of willful and
 27 malicious injury and/or reckless disregard to Diversified. The Hantges Dischargeability
 28 Complaint seeks a determination that all of Mr. Hantges' debts to Diversified are non-

1 dischargeable, and a judgment for Diversified in an amount not less than \$149,555,735.

2 Diversified's trial against Mr. Hantges was originally set for June 21, 23, and 24,
 3 2011, but Diversified, USACM, and the chapter 7 trustee (the "Trustee") reached
 4 agreements that obviated the need for trial. Specifically, the Trustee had filed his own
 5 adversary proceeding objecting to Mr. Hantges' discharge pursuant to 11 U.S.C. § 727,
 6 and on May 11, 2011, the Court entered its *Stipulated Judgment* [Docket No. 945].
 7 Pursuant to the Stipulated Judgment, Mr. Hantges will not receive a bankruptcy discharge
 8 of any of the allowed claims filed against him. Furthermore, Mr. Hantges stipulated that
 9 Diversified has an allowed claim in the amount of \$94,461,197, and on June 8, 2011 the
 10 Court approved that Stipulation. See *Stipulation and Order Allowing Proof of Claim of*
 11 *USA Capital Diversified Trust Deed Fund, LLC* [Docket No. 952]. Thus, Mr. Hantges
 12 will not receive a discharge of the \$94,461,197 debt he owes Diversified. Diversified has
 13 accordingly dismissed its nondischargeability case against Mr. Hantges. See *Order*
 14 *Dismissing Adversary Proceeding* [Docket No. 93 in Adversary Proceeding No. 08-
 15 01041].

16 **3. Nondischargeability Complaint – In re Joseph D. Milanowski**

17 On March 28, 2008, Diversified filed a nondischargeability complaint (the
 18 "Milanowski Dischargeability Complaint") in the Joseph D. Milanowski bankruptcy
 19 proceeding. [Docket No. 416 in Bankruptcy Case No. 07-13162; Adversary Case No.
 20 08-01090]. The Milanowski Dischargeability Complaint alleges that Mr. Milanowski's
 21 debts to Diversified should not be discharged under 11 U.S.C. § 523 because
 22 Mr. Milanowski (1) obtained money and property from Diversified through false
 23 pretenses, false representations, and/or actual fraud, (2) Mr. Milanowski misappropriated
 24 Diversified's money and property while acting in a fiduciary capacity towards
 25 Diversified, and (3) Mr. Milanowski obtained Diversified's money and property by
 26 means of willful and malicious injury and/or reckless disregard to Diversified. The
 27 Milanowski Dischargeability Complaint seeks a determination that all of
 28 Mr. Milanowski's debts to Diversified are non-dischargeable, and a judgment for

1 Diversified in an amount not less than \$149,555,735. Mr. Milanowski filed an Answer
 2 [Docket No. 7 in Adversary Case No. 08-01090] on June 30, 2008.

3 On September 30, 2008, Diversified and Mr. Milanowski appeared for a
 4 Scheduling Conference before the Court, and the Court agreed to stay the adversary
 5 proceeding pending certain developments in Mr. Milanowski's underlying bankruptcy
 6 case. Since then, Mr. Milanowski's bankruptcy case was converted to chapter 7, and the
 7 United States Trustee filed a complaint objecting to his discharge pursuant to 11 U.S.C. §
 8 727. *See* Complaint [Docket No. 668 in Bankruptcy Case No. 07-13162]. Various
 9 private plaintiffs, referred to by shorthand as the "Kehls," also added a Section 727 claim
 10 to their objection to Mr. Milanowski's discharge. *See* Amended Complaint [Docket No.
 11 657 in Bankruptcy Case No. 07-13162].

12 During a July 13, 2010 status check, the Court set a settlement conference for the
 13 plaintiffs with 11 U.S.C. § 727 claims against Mr. Milanowski, and for the USACM
 14 Liquidating Trust, for October 22, 2010. Diversified and the other parties with claims
 15 against Mr. Milanowski reached a tentative settlement agreement during an October 22,
 16 2010 settlement conference. Mr. Milanowski is currently serving time in federal prison
 17 for charges related to his involvement in Diversified, and his criminal sentence includes a
 18 non-dischargeable restitution award of \$86,900,000. These are just some of the factors
 19 weighing in favor of settlement in Mr. Milanowski's case, versus the continued expense
 20 of a trial.

21 The Court approved the settlement agreement with Mr. Milanowski on March 3,
 22 2011. *See Order Granting Motion for Approval of Settlement Pursuant to Rule 9019 of*
 23 *the Federal Rules of Bankruptcy Procedure* [Docket No. 8286 in Bankruptcy Case No.
 24 06-10725]. The settlement agreement provides for a collective judgment in favor of
 25 USACM and Diversified in the aggregate amount of \$5,000,000, and for a corresponding
 26 reduction of the proofs of claim for USACM and Diversified. On July 13, 2011, the
 27 Court entered an *Agreed Judgment* [Docket No. 46 in Adversary Case No. 08-01090]
 28 against Mr. Milanowski and in favor of Diversified in the amount of \$1,1750,000. The

Agreed Judgment is a final judgment, and disposes of all claims and causes of action in the adversary proceedings.

4. Status of Complaints Filed

Diversified and USACM have filed a number of complaints to recover assets through their litigation counsel, Diamond McCarthy LLP. Diversified's past operating reports have detailed the status of concluded litigation and settlement recoveries prior to the time period encompassed by this Thirteenth Report. The following case is still active:

- *USACM Liquidating Trust v. Deloitte & Touche, LLP and Victoria Loob* (Case No. 08-00461): This Complaint was filed in United States District Court, District of Nevada, on April 11, 2008. Discovery closed January 30, 2009 [Docket No. 83]. On April 26, 2010, Defendant Deloitte & Touche LLP filed a Motion for Summary Judgment (Imputation, In Pari Delicto, and Statute of Limitations) [Docket No. 97]. Both sides filed motions for summary judgment, and the Court entertained oral argument on those motions on August 30, 2010 [Docket No. 149]. On February 16, 2011, the District Court entered its order [Docket No. 155] granting Deloitte & Touche's motion for summary judgment. On March 15, 2011, USACM filed its Notice of Appeal [Docket No. 160] with the District Court. The appeal is pending in the Ninth Circuit Court of Appeals as Case No. 11-15626. USACM's opening brief is due August 8, 2011.

(F) A statement regarding the status of payment of UST quarterly fees:

All UST fees have been paid in full through July 1, 2011, the final date covered by this Thirteenth Report.

Dated this 5th day of August, 2011.

SNELL & WILMER L.L.P.

By: /s/ Claire Y. Dossier

Robert R. Kinas (Nevada Bar No. 6019)
Claire Y. Dossier (Nevada Bar No. 10030)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for USA Capital Diversified Trust

*Attorneys for USA Capital Diversified Trust Deed Fund,
LLC*

and

ORRICK, HERRINGTON & SUTCLUFFE LLP

Marc A. Levinson

Jeffery D. Hermann

400 Capitol Mall, Suite 3000

Sacramento, California 95814-4497

*Attorneys for USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC*